

# USER AGREEMENT

*Last Updated January 31, 2017*

This User Agreement (the "Agreement") is a legally binding agreement between you and H.D. Vest Advisory Services, Inc., a Texas corporation ("HD Vest"), that governs your use of and access to HD Vest's website at [www.BluVest.com](http://www.BluVest.com) (the "Website") through which HD Vest provides automated information, advice and discretionary investment management services to "Users" ("Services"). For the purpose of this Agreement, a "User" is an individual who subscribes to or utilizes the Services for a fee as well as an individual who uses the Website to evaluate our services or for educational purposes.

If you choose to retain HD Vest to provide you with discretionary investment management services with respect to your assets, and to have an account established with a designated broker-dealer, your relationship with HD Vest will be governed by the HD Vest Client Account Agreement ("Client Agreement") that you will be asked to agree to in addition to this Agreement. In the event there are inconsistencies between the terms of the Client Agreement and the terms of this Agreement, the Client Agreement shall govern.

The HD Vest Privacy Policy for Individuals and the HD Vest Online and Mobile Privacy Policy are incorporated into this Agreement by reference and made a part of this Agreement as if fully set forth herein.

***Please read the following terms and conditions of use with respect to the Website and Services carefully and completely:***

## **1. Acceptance of Terms and Conditions of This Agreement**

Use of the Website and Services, including your subscription to Services, indicates that you have read and understand this Agreement and agree to be bound by its terms. If you do not agree with some or all of the terms and conditions specified herein, you should not access or utilize the Website or Services.

## **2. Access to Services; Force Majeure**

HD Vest provides Services solely via the World Wide Web and requires you to have the equipment and Internet access necessary to access the Website. You are responsible for the cost and maintenance of your computer hardware, software and any related equipment ("Computer") and Internet access. HD Vest will not be responsible for any problems or liabilities related to or arising from your Computer or Internet access, including without limitation any virus or similar problem associated with your use of Services utilizing your Computer and the Internet.

HD Vest shall not be held responsible for any delay or failure to perform any part of the Services or this Agreement to the extent such delay or failure results from any cause beyond its control and without the fault or negligence of HD Vest, such as acts of God, acts of war or terrorism, fires, storms, floods, epidemics, adverse weather or events of nature, riots, work stoppages and strikes, embargoes, computer viruses, unauthorized access, systems failure, failure or technical difficulties with software, hardware or other equipment, downtime for hardware and software maintenance, unusual volumes of traffic, failure of communications

lines, telephone or other interconnect problems, theft, government restrictions, exchange or market rulings, and failure of utility services; provided, however, that in the case of any such force majeure event, HD Vest shall use its best efforts to resume the performance of its Services and duties and obligations hereunder as quickly as possible.

### **3. Eligibility**

Services are intended solely for individuals who are 18 or older and who are lawful residents of the United States. Any access to or use of the Services by anyone under 18 or who is not a resident of the United States is unauthorized, unlicensed, and in violation of this Agreement. By accessing or using the Services, you represent and warrant that you are 18 or older and a resident of the United States.

### **4. U.S. Jurisdiction**

Unless otherwise specified, the Website has been published only for residents of the United States. The information provided on the Website is not intended for distribution to, or use by, any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation, or which would subject HD Vest or any of its affiliates, services or products to any registration requirement within such jurisdiction or country. Unless otherwise specified, services and products described or mentioned on the Website are made available only to persons residing in the United States, and the information on the Website is only for such persons. HD Vest does not claim that the services or products described or mentioned on the Website are available in any particular jurisdiction. If you choose to access the Website from a location other than the United States, you do so at your own initiative, and you are responsible for compliance with any applicable local laws or regulatory requirements.

### **5. Personal Use/Restrictions on Use**

You hereby acknowledge and agree that Services are designed and intended for your personal and non-commercial use. Other than to family members or advisors, you may not copy, distribute or display Services or any derivative work of Services to any third party or in any way commercially exploit any part of Services.

### **6. User Information**

You agree that any information that you provide to HD Vest in connection with the provisions of Services will be true, complete and accurate and that you will promptly update such information in order to keep it current so that it remains true, complete and accurate at all times.

### **7. Access Security**

In order to subscribe to Services, you must register to create an account ("User Account"). When you register, you will be asked to create a password, which you will be required to use to access your User Account together with your username, which will be your e-mail address. HD Vest has physical, electronic and procedural safeguards to guard Users' non-public personal information.

You are responsible for safeguarding your username, password and other User Account information. You agree not to disclose your username and password to any third party and you will notify HD Vest immediately if your username and/or password are lost or stolen or if you suspect any unauthorized use of your User Account. As a User, you agree that you shall be solely responsible for any activities or actions under your User Account, whether or not you have authorized such activities or actions and that HD Vest is not responsible for losses or damages of any kind due to your failure to comply with these requirements.

## **8. Use of Investment Advisers and Other Service Providers by HD Vest**

You hereby acknowledge and agree that HD Vest may retain affiliated or unaffiliated investment advisers and other service providers to assist it in providing you with discretionary investment management services or in satisfying other duties and obligations hereunder. Such investment advisers and other service providers are Third Party Providers, as defined below.

## **9. Account Aggregation Service**

HD Vest may make available an account aggregation function that allows Users who create and maintain User Accounts on the Website to view, in a single location on the Website, consolidated financial information from such accounts that Users maintain at various financial institutions as Users may designate from time to time ("Outside Accounts"). In addition, as part of its Services, HD Vest may grade certain investments held by such Outside Accounts (such as mutual funds, ETFs and individual stocks).

To use the account aggregation function (if it is made available), Users understand and agree that:

- The function is not available for all types of accounts and/or for all financial institutions. As such, HD Vest's only obligation is to make available to Users the ability to aggregate such types of accounts at such financial institutions as may then be available as part of Services in HD Vest's sole discretion without cost or expense to HD Vest.
- For each available Outside Account that User desires to aggregate on the Website, Users must provide HD Vest's third party aggregation vendor with the necessary login credentials to access the Outside Account such as username and password. Users will provide this information through such function and process as HD Vest may determine from time to time.
- HD Vest will access the website maintained by each third-party financial institution for each Outside Account designated for aggregation in order to retrieve the information within the Outside Account.
- Each User who wishes to utilize the account aggregation function on the Website hereby grants HD Vest authority, with respect to each Outside Account designated for aggregation, to (1) use the login credentials for such Outside Account in order to access the account information within such Outside Account; (2) retrieve the account information within the Outside Account; and (3) as necessary, store the account information so retrieved in order to be able to display such information to the User in

connection with Services being provided to the User. The User hereby agrees that the financial institutions that provide and maintain the User's Outside Accounts shall be entitled to rely on the foregoing authorization granted by the User.

- For each Outside Account designated for aggregation, User represents and warrants to HD Vest that (1) User is the legal owner of the Outside Account; (2) User has the legal right to disclose his or her login credentials for such Outside Account; and (3) User has the right to grant HD Vest the foregoing authorization.
- HD Vest is not responsible for any acts, errors, or omissions by the financial institutions at which Users maintain Outside Accounts, or for the accuracy of the information provided by such financial institutions.

For all purposes hereof, each User who wishes to utilize the account aggregation function on the Website hereby grants HD Vest or any of its Third Party Providers (as defined below) a limited power of attorney, and hereby appoints HD Vest or such Third Party Provider as his/her true and lawful attorney-in-fact and agent with full power of substitution and re-substitution, for the User and in the User's name, place and stead, in any and all capacities, to access the websites of third-party financial institutions and retrieve information from the User's Outside Accounts, and use such information, all as described above, with the full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection with such activities, as fully to all intents and purposes as the User might or could do in person. **THE USER ACKNOWLEDGES AND AGREES THAT WHEN HD VEST OR A THIRD PARTY PROVIDER ACCESSES AND RETRIEVES INFORMATION FROM WEBSITES OF OTHER FINANCIAL INSTITUTIONS, HD VEST OR THE THIRD PARTY PROVIDER IS ACTING AS USER'S AGENT, AND NOT AS THE AGENT OF OR ON BEHALF OF THE FINANCIAL INSTITUTIONS THAT PROVIDE AND MAINTAIN OUTSIDE ACCOUNTS FOR THE USER.** The User hereby agrees that the financial institutions that provide and maintain the User's Outside Accounts shall be entitled to rely on the foregoing authorization, agency and power of attorney granted by the User. User understands and agrees that the account aggregation service made available by HD Vest is not endorsed or sponsored by any financial institutions that provide and maintain the User's Outside Accounts.

## **10. Intellectual Property**

All of the pages of the Website are owned and controlled by HD Vest. Certain services and content on the Website, including data, reports, ratings and other information ("Data") and technology and methods used in determining and delivering investment advice and recommendations underlying Services and the Website ("Software"), may also be provided by third parties ("Third Party Providers") and comprise intellectual property of such Third Party Providers protected by copyrights, trademarks, service marks, logos, trade names, patents or other rights and laws. Except for intellectual property associated with Data and Software owned by Third Party Providers, all of the pages and content on the Website are owned and controlled by HD Vest. Such Website pages and content are protected by U.S. copyright laws and international treaties. The copyrighted materials on the Website (whether owned by HD Vest or by Third Party Providers) include, but are not limited to, the text, design, software, images, graphics, source code, and the content on the Website. You are authorized to view the information available on the Website for your informational purposes only. You may download copyrighted materials for your personal or internal business purposes only. You

acknowledge that you do not acquire any ownership rights by downloading copyrighted material, whether such material is owned by HD Vest or any Third Party Provider.

HD Vest and its Third Party Providers retain all ownership rights (including without limitation all intellectual property rights) to and interest in Services, Third Party Data, and Software. You hereby acknowledge and agree that Services, Third Party Data, Software, and any underlying technology used in connection therewith contain proprietary information of HD Vest and its Third Party Providers and that you may not copy, reproduce, decompile, reverse engineer or otherwise replicate, create derivative works of, modify, sublicense, assign, sell, transfer, network or in any way commercially exploit any part of Services, Third Party Data, or Software (including without limitation any Java applets associated with the Services). You must abide by all copyright notices or restrictions contained in or attached to any Service content or a portion of the Service. You further acknowledge and agree that neither this nor any other agreement limits HD Vest's or any of our Third Party Providers' rights under trade secret, copyright, trademark, service mark, logo, trade name, patent or other laws.

If you become aware of misuse of the Website or content thereon by any person, please contact HD Vest to report any abuse.

#### **11. Reporting Instances of Copyright Infringement**

If you believe that content residing on or accessible through the Website infringes a copyright, please send a notice of copyright infringement containing the following information to the individual referenced in this section at the address specified below:

- (1) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (2) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works at that site;
- (3) identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the individual referenced in this section to locate the material;
- (4) information reasonably sufficient to permit the individual referenced in this section to contact you, such as an address, telephone number, and, if available, an electronic mail address at which you may be contacted;
- (5) a statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- (6) a statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

HD Vest Advisory Services  
Attn: General Counsel  
6333 N. State Highway 161, 4<sup>th</sup> Floor  
Irving, Texas 75038

## 12. Disclaimers and Limit of Liability

### For All Users:

(a) This Website may include forward-looking statements. All statements other than statements of historical fact are forward-looking statements (including words such as “believe,” “estimate,” “anticipate,” “may,” “will,” “should,” and “expect”). Although we believe that the expectations reflected in such forward- looking statements are reasonable, we can give no assurance that such expectations will prove to be correct. Various factors could cause actual results or performance to differ materially from those discussed in such forward-looking statements.

(b) Historical performance is not indicative of any specific investment or future results.

(c) Views regarding the economy, securities markets or other specialized areas, like all predictors of future events, cannot be guaranteed to be accurate and may result in economic loss to the investor.

(d) All investments entail a risk of loss of investment capital and you may lose money.

(e) Your use of the Website and Services is at your sole discretion and risk. The Website and all materials, information, products and Services included therein, are provided on an **AS IS** and **AS AVAILABLE** basis without warranties of any kind from HD Vest or any Third Party Provider.

**HD VEST AND ANY THIRD PARTY PROVIDER EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, RELATING TO THE WEBSITE, SERVICES, CONTENT AND/OR USER INFORMATION, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF PROPRIETARY RIGHTS, COURSE OF DEALING OR COURSE OF PERFORMANCE. HD VEST AND ANY SUCH THIRD PARTY PROVIDER DISCLAIM ANY WARRANTIES, EXPRESS OR IMPLIED:**

- 1. REGARDING THE AVAILABILITY, SECURITY, ACCURACY, RELIABILITY, TIMELINESS AND PERFORMANCE OF THE WEBSITE, SERVICES, CONTENT AND/OR USER INFORMATION;**
- 2. THAT THE WEBSITE OR SERVICES WILL BE ERROR-FREE OR THAT ANY ERRORS WILL BE CORRECTED;**
- 3. THAT THE WEBSITE WILL BE FREE FROM ELECTRONIC VIRUSES;**
- 4. REGARDING THE PERFORMANCE OF OR ACCURACY, QUALITY, CURRENCY, COMPLETENESS OR USEFULNESS OF ANY INFORMATION PROVIDED BY HD**

**VEST OR A THIRD PARTY PROVIDER, INCLUDING BUT NOT LIMITED TO INFORMATION OBTAINED THROUGH THE WEBSITE AND SOCIAL MEDIA; OR**

- 5. THAT (i) THE SERVICES AND THE WEBSITE WILL MEET YOUR REQUIREMENTS, (ii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, OR (iii) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICES AND THE WEBSITE WILL MEET YOUR EXPECTATIONS.**

Any material downloaded or otherwise obtained through the use of Services or the Website is done at your own discretion and risk and you are solely responsible for any damage to your computer system or loss of data that results from the download of any such material. No advice or information, whether oral or written, obtained by you from HD Vest or a Third Party Provider shall create any warranty not expressly stated in this Agreement. If you choose to rely on such information, you do so solely at your own risk.

Some states or jurisdictions do not allow the exclusion of certain warranties. Accordingly, some of the above exclusions may not apply to you.

**(f) UNDER NO CIRCUMSTANCE WILL HD VEST OR ITS OFFICERS, DIRECTORS, MEMBERS, AGENTS, SUBSIDIARIES, AFFILIATES, LICENSORS OR ANY THIRD PARTY PROVIDER BE LIABLE TO YOU OR ANY THIRD PARTY, REGARDLESS OF THE FORM OF ACTION, FOR ANY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, OR WHETHER IN AN ACTION UNDER CONTRACT, NEGLIGENCE OR ANY OTHER CAUSE, ARISING OUT OF: (I) USE OF OR INABILITY TO USE THE WEBSITE OR SERVICES, (II) THE COST OF GETTING SUBSTITUTE GOODS AND SERVICES, (III) ANY PRODUCTS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO, THROUGH OR FROM THE WEBSITE OR SERVICES, (IV) UNAUTHORIZED USE OF SERVICES OR ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA, (V) STATEMENTS OR CONDUCT OF ANYONE ON THE WEBSITE OR WITH RESPECT TO SERVICES, (VI) PERFORMANCE OR NON-PERFORMANCE OF ANY THIRD PARTY PROVIDER, (VII) RELIANCE ON ANY CONTENT, OR (VIII) ANY SERVICES ADVERTISED, EVEN IF HD VEST OR ANY RELATED PARTY (INCLUDING WITHOUT LIMITATION A THIRD PARTY PROVIDER) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER HD VEST NOR ANY THIRD PARTY PROVIDER SHALL BE LIABLE TO YOU FOR ANY LOSS OR DAMAGE, DIRECT, INDIRECT OR CONSEQUENTIAL, ARISING FROM (I) ANY INACCURACY OR INCOMPLETENESS IN, OR DELAYS, INTERRUPTIONS, ERRORS OR OMISSIONS IN THE DELIVERY OF THE THIRD PARTY DATA OR ANY OTHER INFORMATION SUPPLIED THROUGH THE WEBSITE OR SERVICES OR (II) ANY DECISION MADE OR ACTION TAKEN IN RELIANCE UPON THE THIRD PARTY DATA. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL DAMAGES, THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. THIS SECTION 12(f) IN NO WAY LIMITS HD VEST'S DUTIES AND LIABILITIES OR THE RIGHTS OF USERS WHO SUBSCRIBE TO SERVICES UNDER THE INVESTMENT ADVISERS ACT OF 1940 AND OTHER SECURITIES LAWS.**

(g) HD Vest does not warrant that the Website, or the functions contained in the Website and Services, will be uninterrupted, timely, secure or error-free, that defects will be corrected, or that the Website, or the servers that make it available, are free from viruses or other harmful components. You assume the entire cost of any necessary servicing, repairing, or correcting of your property or operations as a result of using the Website. You accept at your own risk that the Internet or other online communications medium may not perform as intended as a result of human, mechanical, or other error, despite the efforts of HD Vest, you, or any third party.

(h) Web-based advice has significant limitations that Users should consider before subscribing to Services. Specifically, in a web-based advisory arrangement (whether non-discretionary or discretionary), an individual does not receive the benefits of face-to-face, telephone, or otherwise individualized interaction with his/her investment adviser, therefore limiting the individual's ability to ask questions or relay important information. Moreover, such an arrangement also limits the ability of the adviser to fully assess the unique financial condition of an individual, as well as the individual's specific investment goals and objectives.

#### **For Users Who Do Not Subscribe to Services:**

(a) Nothing on the subscription-free part of the Website should be construed as individualized investment advice and should be viewed as general in nature. Individual Users need to subscribe for Services and/or consult their investment adviser, accountant, and/or attorney for specifically tailored and individualized advice and guidance.

(b) Your use of the Website is for educational and informational purposes only and is not intended to provide you with legal, investment, tax or financial planning advice or guidance. The Website does not constitute an offer to sell or a solicitation of an offer to buy any security that may be referenced on or through the Website nor does it constitute an offering or recommendation by HD Vest of any security. You agree as a User that you are responsible for your own investment research and investment decisions, that the Website is only one of many tools you may use as part of a comprehensive investment education process, that you should not and will not rely on the Website as the primary basis of your investment decisions and, except as otherwise provided for herein, HD Vest will not be liable for decisions/actions you take or authorize third parties to take on your behalf based on information you obtain from or see on the Website as a User.

### **13. Fees for Services**

HD Vest's fees for providing discretionary investment management services are described in the HD Vest Advisory Services Client Agreement for **BluVest** Accounts.

### **14. User Representations and Warranties**

In connection with your access to and use of the Website and Services, you represent and warrant that you will:

(a) Comply with all applicable laws, including without limitation privacy laws, intellectual property laws, anti-spam laws, export control laws, tax laws, and all other applicable

regulatory requirements;

(b) Provide accurate information to HD Vest, whether reported directly or through a third party who you authorize, and keep it updated;

(c) Use your real name on your profile and keep your user name and password confidential; and

(d) Use Services in a professional manner.

You also represent and warrant that you will not:

(a) Circumvent, disable, or otherwise interfere with security-related features of the Website or features that prevent or restrict use or copying of any content or User information;

(b) Upload, e-mail, transmit, provide, or otherwise make available:

- any User information which you do not have the lawful right to use, copy, transmit, display, or make available (including any User information that would violate any confidentiality or fiduciary obligations that you might have with respect to the User information);
- any User information that infringes the intellectual property rights of, or violates the privacy rights of, any third-party (including without limitation copyright, trademark, patent, trade secret, or other intellectual property right, moral right, or right of publicity);
- unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of solicitation;
- any personal information that is unlawful, obscene, harmful, threatening, harassing, defamatory, or hateful, or that contain objects or symbols of hate, invade the privacy of any third-party, contain nudity, are deceptive, threatening, abusive, inciting of unlawful action, or are otherwise objectionable in the sole discretion of HD Vest;
- any personal information that contains software viruses or any other computer code, files, or programs designed to (i) interrupt, destroy, or limit the functionality of any computer software; or (ii) interfere with the access of any user, host or network, including without limitation overloading, flooding, spamming, mail-bombing, or sending a virus to HD Vest or the Website; or
- any personal information that includes code that is hidden or otherwise surreptitiously contained within the User information;

(c) Use any meta tags or other hidden text or metadata utilizing a HD Vest name, trademark, URL or product name;

(d) Forge any TCP/IP packet header or any part of the header information in any posting, or in any way use the Website to send altered, deceptive, or false source- identifying information;

(e) Interfere with or disrupt (or attempt to interfere with or disrupt) any HD Vest web page, server, or network, or the technical delivery systems of HD Vest's providers, or disobey any requirements, procedures, policies, or regulations of networks connected to the Website;

(f) Attempt to probe, scan, or test the vulnerability of any HD Vest and/or Financial Guard system or network or breach or impair or circumvent any security or authentication measures protecting the Website;

(g) Attempt to decipher, decompile, disassemble, or reverse-engineer any of the software used to provide the Website;

(h) Attempt to access, search, or meta-search the Website or content thereon with any engine, software, tool, agent, device, or mechanism other than software and/or search agents provided by HD Vest or other generally available third- party web browsers, including without limitation any software that sends queries to determine how a website or web page ranks;

(i) Violate the terms of service or any other rule or agreement applicable to you or HD Vest's inclusion in, reference to, or relationship with any third party or third-party site or service, or your use of any such third-party site or service;

(j) Collect or store personal information about other users without their express permission;

(k) Impersonate or misrepresent your affiliation with any person or entity, through pretexting or some other form of social engineering, or commit fraud;

(l) Solicit any User for any investment or other commercial or promotional transaction;

(m) Violate any applicable law, regulation, or ordinance;

(n) Scrape or copy information through any means (including crawlers, browser plugins and add-ons, and any other technology or manual work);

(o) Use, launch, or permit to be used any automated system, including without limitation "robots," "crawlers," or "spiders";

(p) Copy or use the information, content or data on the Website in connection with a competitive service (as determined by HD Vest in its sole discretion); or

(q) Use the Website or content thereon in any manner not permitted by this Agreement.

## **15. Indemnification**

You hereby agree to indemnify and hold harmless HD Vest and its agents, affiliates, employees, members, officers, directors and licensors, including Third Party Providers, from

any claims, suits, controversies, judgments, losses, awards or settlements (including without limitation, reasonable attorneys' fees) caused by, arising out of or attributable to (i) your failure to fulfill any of your duties and obligations under this Agreement; (ii) your breach of any representation, warranty or covenant in this Agreement; (iii) your violation of any state, federal or non-U.S. laws or rules and regulations thereunder in connection with your use of the Website and Services, or any other person's rights, including but not limited to infringement of any copyright or violation of any proprietary or privacy right; or (iv) any negligence, bad faith or willful misconduct on your part relating to your use of the Website and Services or the performance of or failure to perform any of your duties and obligations under this Agreement.

You agree that any Third Party Provider is a third party beneficiary of these indemnification provisions, with all rights to enforce such provisions as if such Third Party Provider were a party to this Agreement.

#### **16. Electronic Communication; Notices**

By providing your e-mail address or cell phone number to us, you agree that HD Vest may contact you by e-mail or text message and that you will accept these electronic communications from us. You agree that you will not make any claims against us if you do not receive electronic communications, and to notify us promptly if your e-mail address or cell phone number changes.

Any notice or other communication to be given hereunder will be in writing and given by (a) HD Vest via e-mail (in each case to the address that you provide), or (b) you via e-mail tosupport@cs.bluest.com or to such other addresses as HD Vest may specify in writing. The date of receipt shall be deemed the date on which such notice is transmitted.

In addition, you acknowledge and agree that any agreements, documents, forms and regulatory required disclosures pertaining to your User Account and the use of the Website and Services will be provided to you electronically in accordance with HD Vest's Electronic Agreement and Disclosure Statement, which is incorporated herein by reference.

#### **17. Alerts, Notifications and Service Communications**

By creating a User Account, you automatically sign up for various types of alerts via e-mail. When logged in, you may customize, modify and in some cases deactivate alerts by adjusting the settings accordingly.

We never include your password in these communications, but we may include your name, or e-mail address and information about your portfolio(s) if you are a User who subscribes to our Services. Anyone with access to your e-mail will be able to view these alerts.

You may unsubscribe from marketing oriented e-mails at any time.

#### **18. Modification to the Website, Services or User Agreement**

HD Vest owns and operates the Website and, as such, HD Vest may modify or discontinue any aspect of the Website or Services or this Agreement at any time, with or without notice (subject to any applicable legal and regulatory requirements). Any changes, modifications or additions

to, or deletions from, the Website, Services and/or this Agreement shall be effective upon posting on the Website. You agree to review the Website, Services and this Agreement periodically so that you are aware of any changes or modifications that might have been made. With respect to any material modifications to this Agreement, we will additionally provide notice to you by email at the email address you have provided to us. Material modifications shall not apply retroactively unless you expressly consent to such material modifications. Your continued use of the Website and Services and continued access to your User Account after receiving notice of modifications, as set for in this Agreement, shall signify your acceptance of modifications and changes to the Website, Services and/or this Agreement.

## **19. Termination**

You may discontinue your subscription to Services and request termination of your User Account at any time and for any reason by calling us at (800) 214-9040 or such other phone number(s) as HDVAS may specify on the Website. Terms contained in this Agreement pertaining to past service remain enforceable after termination. Termination allows, but does not require, HD Vest to delete your User Account and all information contained therein.

We may terminate or suspend your access to the Website, in our sole discretion, at any time for any reason without notice to you. Further, if we believe, in our sole discretion, that a violation of this Agreement or the rights of HD Vest or any Third Party Provider has occurred, we may take any other corrective action we deem appropriate. We reserve the right to investigate suspected violations of this Agreement or the rights of HD Vest or any Third Party. We may seek to gather information from a User who is suspected of engaging in such violations (or from any other User) and you agree to provide us with such information. We will fully cooperate with any law enforcement authorities or court order requesting or directing us to disclose the identity of anyone posting, publishing, or otherwise making available any User information, e-mails, or other materials that are believed to violate this Agreement.

Any suspension, termination, or cancellation shall not affect your obligations to HD Vest under this Agreement (including but not limited to ownership, indemnification, and limitation of liability), which by their sense and context are intended to survive such suspension, termination, or cancellation.

## **20. Linked Websites**

You hereby acknowledge and agree that HD Vest is in no way responsible for the content of any website owned or operated by a third party that may be linked to the Website via hyperlink, whether such hyperlink is provided by HD Vest or by a third party, or for any transactions you may perform with or through such third-party websites. In addition, HD Vest is in no way responsible for the content of any website to which the Website may link. The information to which a User links is neither prepared nor maintained by HD Vest, and HD Vest has not and will not review or update the information contained in any linked website. HD Vest is not responsible for, and makes no warranty with respect to the contents, accuracy, completeness, timeliness, suitability, or reliability of any linked website. Use of any website hyperlinked to or from the Website is governed by the terms of use of those sites and shall be at your own risk.

The presence of third-party links or information on the Website and within Services does not imply HD Vest's endorsement of such third-party websites or information.

## **21. Third Party Content**

Through the Website, you may have access to market data such as news reports, third-party analyst reports, research, and other information relating to the securities markets (“Market Data”). HD Vest may obtain this Market Data from third parties who are independent of HD Vest. Even though the sources of the Market Data provided on the Website are believed to be reliable, HD Vest is not responsible for, and makes no warranty with respect to the contents, accuracy, completeness, timeliness, suitability, or reliability of the Market Data. The Market Data provided is not a complete summary or statement of all available information or data. **HD VEST MAKES NO EXPRESS OR IMPLIED WARRANTIES (INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) WITH RESPECT TO THE MARKET DATA.**

The Market Data and other information accessible through the Website are for personal, non-commercial use. You agree not to reproduce, modify, sell, distribute, broadcast, publish, or use for any commercial or unlawful purpose any Market Data or other information you access through the Website.

The Market Data is provided “as is” and on an “as available” basis. HD Vest will not be responsible for lost profits, trading losses, or any other damages resulting from inaccurate, defective, or unavailable Market Data or other information. HD Vest is not obligated to update or to continue to offer Market Data or other information accessible through the Website.

## **22. No Third Party Rights; Entire Agreement**

You agree that this Agreement and the rules, restrictions, and policies contained herein, and HD Vest’s enforcement thereof, are not intended to confer and do not confer any rights or remedies on any person other than you and HD Vest. This Agreement together with HD Vest’s Electronic Agreement and Disclosure Statement and Client Agreement (if applicable) as well as any broker-dealer agreements, forms and documents required to be completed in connection with HD Vest’s provision of discretionary investment management services (if applicable) constitute the entire agreement between HD Vest and you with respect to the subject matter hereof. If any part of this Agreement is held invalid or unenforceable, that part will be deemed modified as necessary to make it effective, and the remaining provisions of this Agreement will remain in effect.

## **23. Governing Law; Venue**

This Agreement, and all the terms specified herein, shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflict of law principles, regardless of your state of residence or if you transact business with HD Vest in Texas or elsewhere. Any legal action or proceeding arising under this Agreement will be brought exclusively in Dallas, Texas, and the parties hereby irrevocably consent to the personal jurisdiction and venue therein. Nothing in this Agreement creates any rights or protections that you are not already entitled to by law.

## **24. Survival**

You agree that all rights and remedies that inure to HD Vest and its Third Party Providers in connection with this Agreement, including, but not limited to, the limitations of the liability of HD Vest and its Third Party Providers and your obligation to indemnify HD Vest and the Third Party Providers, are continuing and shall survive the termination of the Agreement.

## **25. Successors and Permitted Assigns**

This Agreement shall be binding on each User's heirs, executors, successors, administrators, conservators, and permitted assigns.

## **26. Assignment**

This Agreement, or any rights or responsibilities hereby created, may not be assigned (as that term is defined under the Investment Advisers Act of 1940, as amended) by either a User or HD Vest without the prior written consent of the other party hereto. For the avoidance of doubt, such written consent may be requested and provided electronically via e-mail or other electronic means.

In the event of an assignment by HD Vest, HD Vest shall request a User's consent within a specified reasonable time (which shall not be less than thirty (30) days prior to the effective date of assignment). If the User does not respond to such request within the time specified, HD Vest shall inform such User that the proposed assignee will continue the Services of HD Vest for a specified reasonable time (which shall not be less than thirty (30) days after providing such notice to the User), and if the User does not respond to such second notice from HD Vest, such User's continued access to his/her User Account and use of the Services provided by the proposed assignee shall constitute the User's consent to the assignment.

## **27. Arbitration**

**THIS AGREEMENT CONTAINS A PRE-DISPUTE ARBITRATION CLAUSE. BY ACKNOWLEDGING AND AGREEING TO THIS AGREEMENT, WHICH INCLUDES AN ARBITRATION AGREEMENT, EACH USER AND HD VEST AGREE AS FOLLOWS:**

- **ALL PARTIES TO THIS AGREEMENT ARE GIVING UP THE RIGHT TO SUE EACH OTHER IN COURT, INCLUDING THE RIGHT TO A TRIAL BY JURY, EXCEPT AS PROVIDED BY THE RULES OF THE ARBITRATION FORUM IN WHICH A CLAIM IS FILED.**
- **ARBITRATION AWARDS ARE GENERALLY FINAL AND BINDING; A PARTY'S ABILITY TO HAVE A COURT REVERSE OR MODIFY AN ARBITRATION AWARD IS VERY LIMITED.**
- **THE ABILITY OF THE PARTIES TO OBTAIN DOCUMENTS, WITNESS STATEMENTS AND OTHER DISCOVERY IS GENERALLY MORE LIMITED IN ARBITRATION THAN IN COURT PROCEEDINGS.**
- **THE ARBITRATOR DOES NOT HAVE TO EXPLAIN THE REASON(S) FOR HIS OR HER AWARD.**

- **THE ARBITRATOR MAY BE, OR HAVE BEEN, AFFILIATED WITH THE SECURITIES INDUSTRY.**
- **THE RULES OF SOME ARBITRATION FORUMS MAY IMPOSE TIME LIMITS FOR BRINGING A CLAIM IN ARBITRATION. IN SOME CASES, A CLAIM THAT IS INELIGIBLE FOR ARBITRATION MAY BE BROUGHT IN COURT.**
- **THE RULES OF THE ARBITRATION FORUM IN WHICH THE CLAIM IS FILED, AND ANY AMENDMENTS THERETO, SHALL BE INCORPORATED INTO THIS AGREEMENT.**

**USER AGREES THAT ALL CLAIMS OR CONTROVERSIES BETWEEN OR AMONG SUCH USER AND HD VEST AND/OR ANY OF THEIR RESPECTIVE PRESENT OR FORMER AFFILIATES, OFFICERS, DIRECTORS, OR EMPLOYEES IN CONNECTION WITH THIS AGREEMENT OR CONCERNING OR ARISING FROM THE MATTERS COVERED IN THIS AGREEMENT SHALL BE DETERMINED BY A SINGLE ARBITRATOR SELECTED IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION (THE "ARBITRATION RULES"). THE ARBITRATION SHALL BE CONDUCTED PURSUANT TO THE ARBITRATION RULES AND IN ACCORDANCE WITH THE SUBSTANTIVE LAW OF THE STATE OF NEW YORK. THE AWARD RENDERED BY THE ARBITRATOR SHALL BE FINAL AND JUDGMENT MAY BE ENTERED UPON IT IN ANY COURT HAVING JURISDICTION OVER THE PARTIES.**

**NO PARTY SHALL BRING A PUTATIVE OR CERTIFIED CLASS ACTION TO ARBITRATION, NOR SEEK TO ENFORCE ANY PRE-DISPUTE ARBITRATION AGREEMENT AGAINST THE OTHER PARTY WHO HAS INITIATED IN COURT A PUTATIVE CLASS ACTION; OR WHO IS A MEMBER OF PUTATIVE CLASS WHO HAS NOT OPTED OUT OF THE CLASS WITH RESPECT TO ANY CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL: (I) THE CLASS CERTIFICATION IS DENIED; (II) THE CLASS IS DECERTIFIED; OR (III) THE PARTY IS EXCLUDED FROM THE CLASS BY THE COURT.**

**FAILURE TO ENFORCE THIS AGREEMENT TO ARBITRATE SHALL NOT CONSTITUTE A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT STATED HEREIN.**

## **28. Privacy**

We understand the need to safeguard your information and records from unauthorized use and disclosure. Please see HD Vest's Notice of Privacy Policy For Individuals and HD Vest's Online and Mobile Privacy Policy located on the Website, which are incorporated by reference as if fully set forth herein. This HD Vest's privacy policies may change from time to time, so review them with regularity and care. By using the Website or the Services, you consent to the collection, use, disclosure and sharing of your information by HD Vest in accordance with its privacy policies.

## **29. Receipt of Required Disclosure Documents**

You hereby acknowledge and agree that you have received and reviewed (i) HD Vest's Form ADV 2A – Firm Brochure; (ii) HD Vest's Privacy Policy For Individuals; (iii) HD Vest's Online and Mobile Privacy Policy (iv) Financial Guard, LLC's Form ADV 2A – Firm Brochure; (v) Financial Guard, LLC's Notice of Privacy Policy For Individuals; and (vi) HD Vest's Electronic Agreement and Disclosure Statement, all of which are available on the Website.

**NOTE: THIS AGREEMENT CONTAINS A PRE-DISPUTE ARBITRATION CLAUSE, WHICH IS LOCATED IN SECTION 27 HEREOF.**

Advisory services offered through HD Vest Advisory Services<sup>SM</sup> (HDVAS). 6333 N. State HWY 161 4th Floor,  
Irving, Texas 75038 | (972) 870-6000

HDVAS offers its BluVest online investment advisory services together with Financial Guard LLC, an unaffiliated sub-adviser retained by HDVAS.